

AMENDED IN SENATE APRIL 7, 2008

**SENATE BILL**

**No. 1634**

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**Introduced by Senator Steinberg**

February 22, 2008

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An act to amend Section 1367.63 of the Health and Safety Code, and to amend Section 10123.88 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1634, as amended, Steinberg. Health care coverage: cleft palates.

Existing law provides for the regulation of health care service plans by the Department of Managed Health Care. Existing law provides for the regulation of health insurers by the *Department of Insurance Commissioner*. A willful violation of the provisions governing health care service plans is a crime.

Existing law requires health care service plan contracts and every policy of health insurance covering hospital, medical, or surgical expenses to cover reconstructive surgery, as defined, *which surgery may be subject to prior authorization and utilization review*.

On and after January 1, 2009, this bill would require specified health care service plan contracts and ~~the above-described~~ *health* insurance policies to cover orthodontic services deemed necessary for medical reasons by a cleft palate or craniofacial team, as specified, *subject to the prior authorization and utilization review process described above*. Because the bill would impose new requirements on health care service plans, the willful violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) There are over 1,000 cleft palate procedures performed  
4 annually in California.

5 (b) Children with cleft palates may have special problems related  
6 to missing, malformed, or misplaced teeth that require orthodontic  
7 procedures.

8 (c) The orthodontic procedures for cleft palate children to correct  
9 these problems are needed for medical reasons to improve speech,  
10 eating, and the general health of a child's mouth.

11 (d) Currently, multiple states require health plans to cover  
12 orthodontic care needed for medical reasons as a result of a cleft  
13 palate.

14 SEC. 2. Section 1367.63 of the Health and Safety Code is  
15 amended to read:

16 1367.63. (a) Every health care service plan contract, except a  
17 specialized health care service plan contract, that is issued,  
18 amended, renewed, or delivered in this state on or after July 1,  
19 1999, shall cover reconstructive surgery, as defined in subdivision  
20 (c), that is necessary to achieve the purposes specified in paragraphs  
21 (1) or (2) of subdivision (c). Nothing in this section shall be  
22 construed to require a plan to provide coverage for cosmetic  
23 surgery, as defined in subdivision (d).

24 (b) No individual, other than a licensed physician competent to  
25 evaluate the specific clinical issues involved in the care requested,  
26 may deny initial requests for authorization of coverage for  
27 treatment pursuant to this section. For a treatment authorization  
28 request submitted by a podiatrist or an oral and maxillofacial  
29 surgeon, the request may be reviewed by a similarly licensed

1 individual, competent to evaluate the specific clinical issues  
2 involved in the care requested.

3 (c) “Reconstructive surgery” means surgery performed to correct  
4 or repair abnormal structures of the body caused by congenital  
5 defects, developmental abnormalities, trauma, infection, tumors,  
6 or disease to do either of the following:

7 (1) To improve function.

8 (2) To create a normal appearance, to the extent possible.

9 (d) “Cosmetic surgery” means surgery that is performed to alter  
10 or reshape normal structures of the body in order to improve  
11 appearance.

12 (e) In interpreting the definition of reconstructive surgery, a  
13 health care service plan may utilize prior authorization and  
14 utilization review that may include, but need not be limited to, any  
15 of the following:

16 (1) Denial of the proposed surgery if there is another more  
17 appropriate surgical procedure that will be approved for the  
18 enrollee.

19 (2) Denial of the proposed surgery or surgeries if the procedure  
20 or procedures, in accordance with the standard of care as practiced  
21 by physicians specializing in reconstructive surgery, offer only a  
22 minimal improvement in the appearance of the enrollee.

23 (3) Denial of payment for procedures performed without prior  
24 authorization.

25 (4) For services provided under the Medi-Cal program (Chapter  
26 7 (commencing with Section 14000) of Part 3 of Division 9 of the  
27 Welfare and Institutions Code), denial of the proposed surgery if  
28 the procedure offers only a minimal improvement in the appearance  
29 of the enrollee, as may be defined in any regulations that may be  
30 promulgated by the State Department of Health Care Services.

31 (f) (1) Every health care service plan contract, *except a*  
32 *specialized health care service plan contract*, that is issued,  
33 amended, renewed, or delivered in this state on or after January  
34 1, 2009, shall cover orthodontic services deemed necessary for  
35 medical reasons by a cleft palate or craniofacial team that is  
36 identified by the Cleft Palate Foundation for cleft palate procedures.

37 (2) *The prior authorization and utilization review processes*  
38 *prescribed in subdivision (e) shall apply to the services provided*  
39 *pursuant to this subdivision.*

40 (2)

(3) This subdivision shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, between the State Department of Health Care Services and a health care service plan for enrolled Medi-Cal beneficiaries.

SEC. 3. Section 10123.88 of the Insurance Code is amended to read:

10123.88. (a) Every policy of health insurance covering hospital, medical, or surgical expenses that is issued, amended, renewed, or delivered in this state on or after July 1, 1999, shall cover reconstructive surgery, as defined in subdivision (c), that is necessary to achieve the purposes specified in paragraphs (1) or (2) of subdivision (c). Nothing in this section shall be construed to require a policy to provide coverage for cosmetic surgery, as defined in subdivision (d). This section shall only apply to health benefit plans, as defined in subdivision (a) of Section 10198.6, except that for accident only, specified disease, or hospital indemnity insurance, coverage for benefits under this section shall apply to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy. Nothing in this section shall be construed as imposing a new benefit mandate on accident only, specified disease, or hospital indemnity insurance.

(b) No individual, other than a licensed physician competent to evaluate the specific clinical issues involved in the care requested, may deny initial requests for authorization of coverage for treatment pursuant to this section. For a treatment authorization request submitted by a podiatrist or an oral and maxillofacial surgeon, the request may be reviewed by a similarly licensed individual, competent to evaluate the specific clinical issues involved in the care requested.

(c) "Reconstructive surgery" means surgery performed to correct or repair abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease to do either of the following:

(1) To improve function.

(2) To create a normal appearance, to the extent possible.

(d) Nothing in this section shall be construed to require an insurer to provide coverage for cosmetic surgery. "Cosmetic

surgery” means surgery that is performed to alter or reshape normal structures of the body in order to improve the patient’s appearance.

(e) In interpreting the definition of reconstructive surgery, an insurer may utilize prior authorization and utilization review that may include, but need not be limited to, any of the following:

(1) Denial of the proposed surgery if there is another more appropriate surgical procedure that will be approved for the enrollee.

(2) Denial of the proposed surgery or surgeries if the procedure or procedures, in accordance with the standard of care as practiced by physicians specializing in reconstructive surgery, offer only a minimal improvement in the appearance of the enrollee.

(3) Denial of payment for procedures performed without prior authorization.

(f) (1) Every policy of health insurance covering hospital, medical, or surgical expenses that is issued, amended, renewed, or delivered in this state on or after January 1, 2009, shall cover orthodontic services deemed necessary for medical reasons by a cleft palate or craniofacial team that is identified by the Cleft Palate Foundation for cleft palate procedures.

(2) *The prior authorization and utilization review processes prescribed in subdivision (e) shall apply to the services provided pursuant to this subdivision.*

(3) *This subdivision shall not apply to Medicare supplement, short-term limited duration health insurance, vision-only, dental-only, or CHAMPUS supplement insurance, or to hospital indemnity, hospital-only, accident-only, or specified disease insurance that does not pay benefits on a fixed benefit, cash payment only basis.*

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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